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OFFICE OF PETITIONS

In re Application of :
Borst et al. :
Application No. 10/638,094 : ON PETITION
Filed: 7 August, 2003 :
Atty Dckt No. 128834-2 :

This is a decision on the petition filed on 2 September, 2005 under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned on 11 May, 2005, for failure to file a timely and proper response to the Notice of Allowance and Fee(s) Due mailed 10 February, 2005, which

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). Grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114.

In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

set a three-month statutory period to reply. The filing of present petition precedes the mailing of Notice of Abandonment. The petition under 37 CFR 1.137(a) filed on 23 June, 2005, was dismissed on 1 August, 2005.

With the present petition, petitioner filed a RCE under 37 CFR 1.114, including a submission in the form of an IDS. The Office notes that payment of the issue fee is the required reply in order to revive the application for failure to submit a timely response to the Notice of Allowance.

Petitioner is advised that the issue fee paid in the present application cannot be refunded. However, if the application is allowed again, petitioner may request that the \$1,400.00 be applied towards the issue fee required by the new Notice of Allowance.²

The application file is being referred to Technology Center Art Unit 1775 for consideration of the IDS filed on 2 September, 2005.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3231.

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Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

² The request to apply the issue fee to the new Notice of Allowance must be made in writing and should be accompanied by the new Issue Fee Transmittal Form (PTOL85(b)), along with a copy of this decision. Additionally, if the issue fee has increased from the previously paid issue fee, the balance due at the time of payment must be submitted. Failure to timely request in writing that the previously paid issue fee be applied towards the new Notice of Allowance and payment of any balance due will result in the abandonment of the application.